



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration and Management

Minutes

October 24, 2012

Members Attending

Paul Bardos <i>Gov't Member, International Trade Commission</i>	John Cooney (Committee Chair) <i>Public Member, Venable LLP</i>	Edward Keable <i>Gov't Member, Department of the Interior</i>
Robert Taylor (by phone) <i>Gov't Member, Department of Defense</i>	James Tozzi, <i>Public Member, Center for Regulatory Effectiveness</i>	

ACUS Staff Attending

Emily Bremer <i>In-House Researcher</i>	Gretchen Jacobs <i>Research Director</i>	Matthew Weiner <i>Executive Director</i>
Paul R. Verkuil <i>Chairman</i>	Stephanie Tatham <i>Attorney Advisor</i>	Matthew Bisanz <i>Intern</i>

Invited Guests Attending

Warren Belmar (by phone) <i>Senior Fellow—Clean Economy Network Education Fund</i>	Jim Chen <i>Consultant</i>	Curtis Copeland <i>Consultant</i>
Eric San Juan <i>Internal Revenue Service, Office of the National Taxpayer Advocate</i>	Jill Wright <i>Department of Health and Human Services, Office of Inspector General</i>	

The meeting commenced at 2:00 pm in the conference room of the Administrative Conference.

Meeting Opening



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee Chair John Cooney opened the meeting and made introductory remarks. He called for the committee to approve the minutes of its September 25 meeting. The minutes were so approved. The Committee agreed to permit public comments in the meeting.

Mr. Cooney brought the Civil Monetary Penalty (CMP) project to the floor for discussion.

Paul Verkuil discussed how hard the Committee has worked on the project and that he hoped it could be sent to the Council for consideration next week and eventually to the plenary in December. He asked that the Committee give John the power to act as a Committee on Style, which was adopted.

Gretchen Jacobs spoke positively of the recommendation and the actions of the staff and consultant. She hoped it would be well received by the Committee. She also discussed a survey that would be sent to the government members for dissemination in their agency.

Jim Chen spoke to describe how he incorporated most of the findings of the report into the recommendation and incorporated further evidence that agencies have no given clear and consistent action in acting under the statute. He also discussed a parallel statute in IRC 1(f) that uses similar language to the CMP that he intended to discuss in the report, but not include in the recommendation. He thought this was interesting in that while he could not find evidence that the IRC was the template for the CMP, it seemed plausible that Congress would have been aware of it. This could explain the CMP CPI lag. He explained how it made sense to refer to a previous year for IRC purposes, but not CMP purposes. He thought the IRC's method on rounding was more appropriate and could be instructive to Congress, but that its general context was not applicable given the way taxes are collected.

Mr. Cooney began the Committee discussion of the draft recommendation and asked if there were any general comments on the recommendation and preamble. There were none.

Recommendation A

Mr. Cooney moved to discuss Recommendation A, for which the Committee had no comments.

Recommendation B

Mr. Cooney moved to discuss Recommendation B.

Edward Keable spoke to ask for clarification on recommendation B.2. Mr. Chen explained that this was based on agencies interpreting the CMP as being so absurd as to warrant deviation from the statute. Mr. Chen explained this recommendation was designed to reinforce the idea that while the rounding procedures do not make sense, it was the wish of Congress and



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

did not qualify for the absurdity exception. Stephanie Tatham mentioned that while the Farm Credit Administration has changed its interpretation of the rounding procedures to comply with the statute, other agencies do not report their methodology in Federal Register notices, so it was felt appropriate that the recommendation ask agencies to review their method as they may be making the same absurdity decision without disclosing it.

Curtis Copeland spoke to say that agencies are still failing to follow the statute and that the recommendation should encourage them to follow the statute until it is amended. He suggested wording changes. Mr. Chen and Mr. Copeland discussed how agencies interpret the statute and account for the inflation gap and CPI lag. Mr. Cooney urged that this be dealt with outside the meeting in subsequent conversations with Mr. Chen. The Committee adopted Mr. Copeland's wording changes. Mr. Keable found that Mr. Chen's response to his question made sense and looked forward to it being reflected in the report.

Warren Belmar suggested a wording change, which was adopted without objection. Mr. Belmar suggested a further wording change as to the term "plain language." The Committee discussed the application of the absurdity exception in relation to the rounding procedure and the removal of the term "plain language." Mr. Cooney reiterated the changes made to the draft for those on the phone. Further discussion ensued on the "plain language" wording. Mr. Cooney called a vote on the wording amendment regarding "plain language." The vote to retain "plain language" passed by a voice vote.

Mr. Cooney brought the cumulative wording changes to a vote. The vote to adopt the other wording changes passed by a voice vote.

Mr. Cooney brought the recommendations to a vote. The vote to adopt both recommendations passed by a voice vote.

Preamble

Mr. Cooney brought the preamble to the floor for discussion. Mr. Tozzi asked a question regarding the rounding errors and the relative dollar amounts affected by the error. Mr. Chen indicated it was the lowest of the three errors identified. They discussed one of Mr. Chen's hypotheticals of this error. Mr. Tozzi thought the hypothetical presented made the rounding error appear more significant than the other two errors. The Committee discussed the effects of the rounding error using examples from the PBGC's experience. Mr. Tozzi thought it could be worded to be more clear and discussed language with Mr. Chen. The Committee discussed the different ways the errors could be compounded and the negative effects of such errors. Mr. Cooney found adoption by consensus for the wording change identified by Mr. Tozzi and Mr. Chen.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Mr. Keable had a comment regarding the top of page four to change it to be stronger. The Committee discussed rewording it and adopted Ms. Tatham's language. Mr. Keable also noted language on page six that needed to be changed to make it more consistent with recommendation B. The Committee adopted his change.

Mr. Cooney brought the entire document to a vote. A unanimous voice vote adopted the preamble and recommendation.

Meeting Closing

Mr. Cooney thanked Mr. Chen and the staff for their work on the CMP project.

Mr. Keable asked how the next project would be selected and Ms. Jacobs indicated it would likely be done at a breakout session at the Plenary meeting and would incorporate the ideas solicited at the prior meeting.

The meeting adjourned at 3:05 pm.